

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

NICHOLAS A. HERNANDEZ,

Defendant.

CASE NO. 8:06CR346

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 26). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement reflects a difference of opinion between the parties with respect to the drug quantity for which the Defendant should be held responsible. (Filing No. 19.) The Defendant believes that he should be held responsible for a quantity placing him in base offense level 26. The government, however, contends that the base offense level should be 34, as reflected in the PSR. (Filing No. 19; PSR, ¶ 24.) The issue will be heard at sentencing. The burden is on the government by a preponderance of the evidence. Drug quantity is the only issue presented in the Defendant's objections.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 25) will be heard at sentencing;

2. Otherwise, the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 24th day of April, 2007.

BY THE COURT:

S/ Laurie Smith Camp
United States District Judge